



ASYLUM IN HUNGARY 2003

In 2003, a total of 2401 persons applied for refugee status in Hungary -- a sharp decrease compared to previous years. In 2003, the highest number of asylum seekers came from Afghanistan, Iraq, Iran, Georgia, Chechnya and India. 178 persons were recognized as refugees. In accordance with the Aliens Act, the non-refoulement provision was applied and 'person authorized to stay' status (subsidiary form of protection, 'PAS') was granted to 772 persons.

Mainly asylum seekers from Iraq and Afghanistan were granted 'PAS' status, however, use of according subsidiary form of protection rather than Convention refugee status was over-frequent and in many cases was applied in place of the former.

According to UNHCR, the Office of Immigration and Nationality (OIN) applied a restrictive interpretation of the 1951 Geneva Convention's refugee definition, and decision-makers rarely applied the ground of membership of a particular social group.

Co-operation between border guard agencies with respect to the implementation of readmission agreements between Hungary and neighbouring countries (namely Ukraine, Romania) improved significantly in 2003. As a result (of also technical improvements), readmission of illegal aliens falling under the scope of these agreements became efficient and quicker. Experience showed that a significant number of asylum seekers crossing the Hungarian border illegally were denied access to Hungarian territory and to the asylum procedure. Those caught by the Border Guard crossing the border illegally were taken into short-time custody at the nearest field unit of the Border Guard. The interview and administrative work is conducted within 24 hours, which is rapidly followed by readmission. In this initial interview the border guards frequently ignored applications for refugee status. A further serious

concerns stem from the fact that the issue of non-refoulement was not examined before readmission, as Ukraine and Romania are 'on the safe third country list'. This practice resulted in a significant number of Iraqi, Afghan and Iranian citizens' readmission to Ukraine during 2003.

The daily average number of foreigners detained in alien policing jails was approximately 250. Statistical data is not available, but it can be estimated that approximately 60-70 % of such detained foreigners were asylum seekers.

Detention of asylum seekers and other foreigners entering or residing in Hungary illegally are applied as a general rule in case of those who are apprehended by the Border Guard or the Police and belong to certain nationalities. The length of detention was in general extended to the legal maximum of 12 months, with the exception of asylum seekers from Iraq and Afghanistan who were (despite of same factual and legal circumstances as in case of persons from e.g. Bangladesh, India or China), released after 30 days of detention for refusal and placed in open reception centres. The expulsion and alien policing detention of illegal foreigners seeking asylum depended on the country of origin of the applicant, which can be perceived as a discriminatory practice in light of § 3 of the 1951 Geneva Convention. Moreover, asylum seekers from countries considered as safe countries of origin (eg. Bangladesh, China) had no chance for being recognized, or being granted 'PAS' status. This is an indication of what can be considered as an attitude of presumption that asylum seekers kept in detention do not deserve international protection or subsidiary forms of protection.

Judicial practice on detention remained inconsistent. Alien policing authorities are obliged to petition the courts to extend alien policing detention, and courts can be requested to review the lawfulness of detention. However, courts – following the county courts’ legal interpretation, in terms of which courts may not examine the lawfulness, justified and enforceable nature of the expulsion order – extended detention of asylum seekers to the maximum 12 months.

The situation of foreigners with family ties to Hungarian nationals (spouses or children) in Hungary remained problematic and controversial. The right to ‘family unity’, protected by the Constitution, the Aliens Act and relevant international human rights instruments is only taken into consideration by Hungarian laws and legal practice against expulsion if the foreign national family member is staying legally in the country. Only these foreigners are entitled to apply for family reunification visas and residence permits, which does not entitle its holder to work - working visas can only be obtained from abroad. The conditions of accommodation and maintenance suitable for the purposes of family reunification are unclear and do not seem to differ from “ordinary” immigration. Immigration officials failed to exercise their discretionary power to handle such cases in a more lenient way as provided by law (e.g. a family reunification visa can be requested in the country), whereby rejected asylum seekers and those whose stay became illegal fall out of the scope of the beneficiaries.

In September 2003, the Supreme Court ruled in a precedent-like decision that denial of visa (to spouses and partners) could be subject to judicial review. A legal remedy was not possible prior to this decision.

Authorities practice with regard to those granted ‘PAS’ status remained unlawful in the first half of 2003. ‘PAS’ are entitled to receive humanitarian residence permits entitling the holder to take up employment or to benefit from the supports and entitlements provided by law. The OIN had provided such persons with a ‘certificate entitling the holder for temporary stay’ issued for periods of 1-3 months. It was only in the second half of 2003, with a one and a half year delay, when the OIN started to issue

the proper residence permits, following a decision by the Prosecutor’s Office which found the obvious violation of the Aliens Act. The Prosecutors’ Office filed a complaint and an indication to the OIN in order to remedy the unlawful omission. However, OIN officers did not follow the lawful practice in each part of the country. The validity of such residence permits was still determined in an arbitrary manner.

With regard to authorisation to stay, the OIN’s legal practice failed to clarify the nature of the procedure for reviewing ‘PAS’ status. Formal decisions were not taken on status withdrawal, and if expulsion was ordered simultaneously, it could not be legally challenged in these cases. HHC lawyers became aware of cases where the OIN Alien Policing Department had contacted the authorities of the country of origin to explore whether the conditions serving as the basis for granting ‘PAS’ status still prevailed.

In July 2003, a new NGO-operated accommodation centre for unaccompanied minor asylum seekers opened in Békéscsaba.

A pilot refugee integration project was launched and implemented in 2003 in the largest reception centre in Debrecen. NGOs and the UNHCR BO in Hungary¹ found that the pilot project has not met its objectives. Project beneficiaries were accommodated in mobile housing located at the outskirts of the reception centre. They were looking at the reception centre for feeling less isolated rather than outside the centre. Not one refugee participating in the project has achieved even minimum standards of self-efficiency.

In summer 2003, a pilot project initiated by the UNHCR BO in Hungary was launched also in the Debrecen reception centre to prevent and respond to sexual and gender based violence.

In 2002, Hungary promulgated the 1954 UN Convention relating to the Status of Stateless Persons. Since then, national legal provisions to implement the convention have not been elaborated, and the procedure to determine statelessness and conditions on which stateless status is recognized are unclear. Consequently, the rights and entitlements connected to stateless

¹ UNHCR Branch Office Hungary, UNHCR Monitoring Mission in HUNGARY - 30 April to 4 July 2003, p. 7

status could neither become effective or be exercised.

Serious concerns were raised by the extradition to Moldova of a Moldovan citizen (suspected of criminal offences) who had alleged that he would face torture, inhuman or degrading treatment in the Bender prison in Moldova upon return. The extradition was executed despite of a pending asylum procedure, and a request by the legal representative to the Hungarian Ministry of Justice not to comply with the Moldovan authorities' extradition request as it would constitute a violation of both § 3 of the European Convention of Human Rights and § 43 of the Aliens Act. The CPT paid a specific visit in November 2003 to the Bender prison in Moldova on account of the extremely harsh conditions there.²

Detention conditions in Alien Policing Jails

Conditions in alien policing jails were worse than general prison conditions in Hungary.

Conditions of detention in alien policing jails vary from place to place. Although law sets out the rules on implementing detention ordered in an alien policing procedure, detainees' rights seemed to depend on the orders of the head of the respective Border Guard Directorate in charge of the alien policing jail. For instance, detainees in the alien policing jail in Nagykanizsa were locked in their bedrooms all day, and cell doors were allegedly opened for only 15 minutes each hour during the day. In other detention facilities bedrooms were kept open, but the bars separating the detention facility from the rest of the building were kept locked.

In some alien policing jails, public payphones were placed outside the detention area and out of detainees' reach, whereby foreign detainees' right to contact their family members was excessively limited.

Lack of foreign languages skills among jail guards and lack of permanently available interpretation hindered communication between guards, doctors/paramedics and detained foreigners.

Information on detainees' rights and obligations and their legal situation in general was insufficient. Foreigners were frustrated by being deprived of their liberty for 12 months solely on the ground of having entered or stayed in the country illegally, particularly when other foreigners (Iraqis, Afghans) were being released after one month. (See also chapter on Asylum Seekers)

With regard to vulnerable groups, detention was in general not applied in the case of separated children or family groups, although the Hungarian Helsinki Committee and the UNHCR Office in Hungary encountered a number of cases during their missions when unaccompanied minors were detained for several months, and in some cases married couples were detained in different quarters of the same detention facility.

In the detention facility in Kiskunhalas detainees complained about ill-treatment by the guards, and were aggrieved at the foul, humiliating and degrading language generally used by the guards. Foreigners felt that the guards looked down on them, black asylum seekers from Africa were said to be especially mistreated (they were on several occasions denied to hand in letters to the guards, and to use the public phone) and some guards were reported to have regularly made xenophobic and racist comments.

Access to detention facilities by lawyers providing free legal assistance and representation was guaranteed on the basis of the Co-operation Agreement between the Hungarian Helsinki Committee and National Border Guard Headquarters. However, it raised concern that at the outset of the war against Iraq, access of lawyers to the Győr detention centre was denied referring to 'increased need for security arrangements'.

Information on the availability of lawyers providing free legal aid was often lacking.

Detainees in some jails did not have access to electricity; cutting their hairs, nails and shaving was only possible once a month or even more seldom.

Basic sanitary and washing supplies were provided for detainees, although in general all these products were out of date. However, in

² <http://www.cpt.coe.int/documents/mda/2003-11-25-eng.htm>

most of the detention facilities laundry facilities were not accessible at all.

Hot food was unavailable on weekends when detainees received bread and canned meat that usually contained pork parts, contrary to many detainees' religious diet.

Apart from the possibility to watch television from 9 am-10 pm and one hour of outdoor exercise (as prescribed by government decree), there were basically no activities offered to foreigners in the jails.

Although general medical care was provided in the alien policing jails, complaints often related to this: detained foreigners rarely had access to specialist medical care when requested and were only taken to hospital in emergency cases. Usually only sleeping pills and tranquillisers were provided. Several detainees reported that in all cases of dental problems they had to have a tooth pulled out.

Adequate psychological or psychiatric care was not available for those in need.

The 2001 Aliens Act stipulated that detention shall be ordered in the interest of implementing the expulsion order issued for a foreigner. In the case of asylum seekers, however, it was not allowed to implement the expulsion until the final decision in the asylum procedure had been taken. The law did not call for the compulsory detention of asylum seekers – nevertheless, asylum seekers who were not able to reach the asylum authorities before being caught by the border guards were detained in 2002. According to the Aliens Act, the maximum length of detention of an asylum seeker was one year, a period of time not in keeping with international law.

By law, it was possible to detain a foreigner following a medical examination. In light of the medical condition of detainees, the Hungarian Helsinki Committee was concerned about whether a thorough medical examination took place in every instance. It also noted that health care services available to detained migrants were unsatisfactory. In Győr, for example, although there was a 24-hour on-duty health care service, there was no qualified doctor. As a result, medication and treatment prescribed were not always appropriate. In addition, a number of

foreigners suffered from psychiatric disorders which remained untreated.

Some detainees belonged to vulnerable groups of asylum seekers (torture victims, pregnant women, persons suffering from psychological or physical problems) who should not have been detained even for a short period of time. Pregnant women and children often received neither milk nor other essential nutrients. In Szombathely, only after a visit by the UNHCR was it discovered that a woman who was four months pregnant had refused to eat for several days. Married couples as well as parents and children were separated, and the same regime applied to children as to adults. The foreigners' isolation was aggravated by difficulties concerning communication. The public payphone, which was the only method of contact with the outside world, was placed outside of the barred area in several jails. There were no foreign language publications or magazines and there was a lack of cultural and sport activities. Long-term detention often led to tension and aggression that was frequently directed against other detainees. Hygienic conditions were substandard; detainees received little soap or detergent. Detainees were escorted to the dining hall by armed guards (often accompanied by dogs).

The Hungarian Helsinki Committee was aware of several cases of ill-treatment of foreigners in alien policing jails.

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